

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHRISTOPHER LEON SMITH,

Plaintiff,

V.

LAKWOOD POLICE DEPT., *et al.*,

## Defendants

No. 09-5446 FDB

**ORDER ADOPTING REPORT AND  
RECOMMENDATION DISMISSING  
ACTION WITHOUT PREJUDICE**

This matter comes before the Court on the recommendation of the Magistrate Judge that this prisoner civil rights action be dismissed. As detailed by the Magistrate Judge, despite being given the opportunity to cure his complaint, the Plaintiff's amended civil rights complaint challenges the propriety of Plaintiff's arrest and validity of a police search leading to his conviction.

Plaintiff may not maintain a 42 U.S.C. § 1983 action unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus. Heck v. Rodriguez, 512 U.S. 477, 487(1994). Plaintiff's challenge would necessarily imply the invalidity of the judgment or continuing confinement, and must be brought as a petition for a writ of habeas corpus, not under § 1983. Butterfield v. Bail, 120 F.3d 1023, 1024 (9<sup>th</sup> Cir. 1997).

1           The Court, having reviewed the Report and Recommendation of Magistrate Judge J.  
2           Richard Creatura and the remaining record, does hereby find and ORDER:

- 3           (1) The Court adopts the Report and Recommendation;  
4           (2) The action is DISMISSED WITHOUT PREJUDICE as Plaintiff must  
5           receive relief by way of Habeas Corpus prior to the claims accruing.  
6           (3) The Clerk is directed to send copies of this Order to Plaintiff, and to the Hon. J.  
7           Richard Creatura.

8           DATED this 13<sup>th</sup> day of October, 2009.



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10           FRANKLIN D. BURGESS  
11           UNITED STATES DISTRICT JUDGE  
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